

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

THOMAS CHARLES DAY
TX-1333616-L

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DOCKETED COMPLAINT NO. 08-164

AGREED FINAL ORDER

On this the 25 day of January, 2010, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the license of Thomas Charles Day, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

In order to conclude this matter Thomas Charles Day neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent, Thomas Charles Day, is a state licensed real estate appraiser, holds certification number TX-1333616-L, and has been licensed by the Board during all times material to this complaint.
2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE Chapter 1103 (Vernon 2007) (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (West 2007) (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.
3. On or about February 24th, 2008, the Respondent appraised real property located at 5009 Willow Lane, Dallas, Texas 75244 ("the property").
4. On or about April 23rd, 2008, the Complainant, Mark Loftus, filed a staff-initiated complaint with the Board based on allegations that the Respondent had produced an appraisal report that contained various deficiencies.
5. On or about April 24th, 2008, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2001, notified Respondent of the nature and accusations involved and Respondent was afforded an opportunity to respond to the accusations alleged by the Complainant. Respondent's response to the complaint was received.

6. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:

- a) Respondent failed to comply with the record keeping provision of the Ethics Rule;
- b) Respondent failed to identify the client and other intended users of the appraisal and failed to identify the intended use of the appraiser's opinions and conclusions;
- c) Respondent failed to identify and report the site description adequately;
- d) Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, physical adaptability of the real estate and market area trends;
- e) Respondent failed to use an appropriate method or technique to determine site value and provided no support for this determination;
- f) Respondent failed to collect, verify, analyze, and reconcile the cost new of improvements and accrued depreciations in his cost approach, and did not employ recognized methods and techniques correctly in his cost approach;
- g) Respondent failed to employ recognized methods and techniques correctly in his sales comparison approach and did not collect, verify, analyze and reconcile comparable sales data adequately;
- h) Respondent failed to analyze all sales of the subject within three years prior to the effective date of the appraisal;
- i) Respondent failed to address the probable time of completion and did not adequately describe the improvements relative to the upgrades and remodeling that was to take place; and,
- j) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.

7. Respondent made material misrepresentations and omitted material facts in his appraisal report as detailed above.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE §§ 1103.451-1103.5535.

2. Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record-keeping provisions); USPAP Standards: 1-2(a) & 2-2(b)(i); 1-2(b) & 2-2(b)(ii); 1-2(e)(i) & 2-2(b)(iii); 1-3(a) & 2-2(b)(viii); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-5(b) & 2-2(b)(viii); 1-2(e) and 2-2(b)(viii) & 1-4(c)(iv); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations and omitting material facts from his appraisal report.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

- a. Have his certification suspended for eighteen months with this suspension being fully probated under the following conditions:
 - i. During the entire probated, eighteen month suspension period Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board. The log shall be submitted every three months and shall detail all real estate appraisal activities he has conducted during the previous three month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of his period of probation within the twenty days of notice of any such request; and,
 - ii. Fully and timely comply with all of the provisions of this Agreed Final Order.
- b. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- c. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
- d. Attend and complete a minimum, 15 classroom-hour course in the Cost Approach;
- e. Attend and complete a minimum, 15 classroom-hour course in Residential Report Writing; and
- f. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

ALL CLASSES required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for licensure.

Failure to timely comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE § 1103.518, including, but not limited to, revocation of the above-noted probation and imposition of the suspension.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

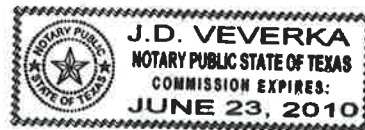
Signed this 25 day of January, 2010.

Thomas Charles Day
THOMAS CHARLES DAY

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 25 day of January, 2010, by THOMAS CHARLES DAY, to certify which, witness my hand and official seal.

J.D. Veverka
Notary Public Signature

J.D. Veverka
Notary Public's Printed Name



Signed by the Commissioner this 23 day of June Feb, 2010.

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Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 12 day of Feb, 2010.



Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board

James B. Ratliff